HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application 931 of 2006

Mahesh Gupta s/o Sri Ranjeet Gupta
R/o 67 Adarsh Nagar, Railway Road,
Rishikesh, District Dehradun ..... Petitioner

Versus

1. State of Uttaranchal
2. Sri Prem Chand Gupta s/o Phool Chandra
R/o 1/6 Ghat Road, Rishikesh ..... Respondents

Dated: 6.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Sandeep Tandon counsel for the petitioner, Sri P.S. Mehta for respondent no. 2 and learned A.G.A. for the State.

By the present application under section 482 Cr.P.C. the applicant has prayed for quashing the proceedings of criminal Case No. 1214 of 2004, Prme Chandra vs. Mahesh Gupta, pending in the Court of Special Judicial Magistrate, Rishikesh.

Briefly stated the applicant has given two cheques no. 259588 dated 30.4.2004 and 259587 dated 29.4.2004 for Rs.47,400/- & Rs.52,600/- to the complainant respondent no.2. When the complainant presented these cheques for payment in the Bank, both the cheques were dishonoured for want of sufficient balance in the account of the applicant. After service of notice complaint under section 138 of the Negotiable Instrument Act, has been filed by the respondent no. 2 in the Court of Special Judicial Magistrate, Rishikesh.

The learned Magistrate after recording the statement of the complainant under section 200 Cr.P.C. and his witnesses under section 202 Cr.P.C. took cognizance against the accused for the offences punishable under section 420 I.P.C. and Sec. 138 of the Negotiable Instrument Act, and summoned the accused. After recording statement of the complainant under section 244 Cr.P.C. and statement of the accused under section 251 Cr.P.C. the learned Magistrate framed charges against the accused under section 420 I.P.C. and Sec. 138 of the Negotiable Instrument Act.

The main contention of the counsel for the applicant is that no charge under section 420 I.P.C. is made out against the accused as the ingredient of section 420 I.P.C. are completely silent in the complaint as well as in the statements of witnesses.

I have gone through the record and I find that dishonest intention from the beginning on the part of the applicant is absent. The cheques were given to the complainant as security and there was no intention of inducement or deceiving to deliver any property. Thus no charge under section 420 I.P.C. is made out against the applicant.

However, as cheques were issued by the applicant which were dishounoured by the Bank, a case under section 138 of the Negotiable Instrument Act, is made out prima facie against the accused. Admittedly no complaint under section 420 I.P.C. has been filed and statements have also been recorded in support of the averments made in the complaint under section 138 of the Negotiable Instruments Act.

In view of the above, the order of the trial Court regarding taking cognizance for the offence under section 420 I.P.C. is

quashed. However, trial for the offence punishable under section 138 of the Negotiable Instrument Act shall go on according to law.

Accordingly, application under section 482 Cr.P.C. is partly allowed.

Rajesh Tandon, J.

Dated: 6.12.2006

*Dhyani